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TO: Local Boards of Health

FROM: Kim Foley, Acting Director
MDPH/BEH Food Protection Program

DATE: August 25, 2010

RE: **Enforcement Guidelines for Allergen Awareness Regulation**

On June 9, 2010, the MDPH Public Health Council voted to amend the State Sanitary Code, Chapter X: Minimum Sanitation Standards for Food Establishments (105 CMR 590.000) in order to implement requirements of the Allergen Awareness Act, M.G.L. c. 140, § 6B. The amendments adopted by the Public Health Council are enclosed with this letter.

Acting under the authority of 105 CMR 590.010(E), the MDPH Food Protection Program (FPP) offers the following guidelines for interpreting and enforcing these new amendments to 105 CMR 590.000.

- (1) Q&A for MDPH Allergen Awareness Regulation – The enclosed list of Q&As will be posted on the MDPH website and updated on a regular basis. If you have a question about this regulation that you would like to add to the list, please contact FPP.
- (2) Inspection Report – The enclosed inspection report meets the requirements of the new amendments, and has been approved by MDPH in accordance with 105 CMR 590.013(E)(1). Alternative forms which are consistent with this prototype may be used if approved by FPP in accordance with 105 CMR 590.013(E)(1). Please note that the only difference between this and earlier reports is the addition of the line “Allergy Awareness 590.009(H) ☐” in the upper right-hand corner under “Non-compliance with:”.
- (3) Inspection Procedures from 10/1/10 to 2/1/11 – Sections 105 CMR 590.009(H)(1) “Poster” and 105 CMR 590.009(H)(2) “Notice on printed menus and menu boards” take effect on October 1, 2010, and should be enforced during routine inspections after that date. In addition to the enclosed Q&As, the following guidelines can be used:

- (a) **Compliance with 105 CMR 590.009(H)(1) “Poster”** – Food establishment must display a copy of the attached poster in the employee work area. No other poster has been approved by MDPH. The approved poster is available on the Food Allergy & Anaphylaxis Network website at <http://www.foodallergy.org/page/restaurant-poster>. As long as the Department-approved poster is on display as required, additional posters may be displayed also. In other words, an alternative poster may be on display, provided that the Department-approved poster is displayed in the employee work area as required by 105 CMR 590.009(H)(1).
- (b) **Compliance with 105 CMR 590.009(H)(2) “Notice on printed menus and menu boards”** – All menus and menu boards in the food establishment must display the words “Before placing your order, please inform your server if a person in your party has a food allergy”. For more detailed information on what to look for during an inspection, please refer to the enclosed regulation and Q&As sheet.
- (c) **Compliance with 105 CMR 590.009(H)(2)(b)2 “Notice at point of service”** – Food establishment may utilize this option in lieu of placing a notice on a menu board. The wording which describes the size and location of the notice was taken from section 105 CMR 590.009(F), which prohibits the sale of tobacco to minors. Board of Health inspectors who are familiar with the “no sale of tobacco to minors” signs already on cash registers can compare those signs to any allergen notices which appear in order to determine if they can be “read from a distance of five feet”.
- (d) **Documenting conditions of non-compliance** – The Board of Health inspector should check the box next to “Allergy Awareness 590.009(H) ☐” (see above), and record the findings in the narrative section of the inspection report in accordance with 105 CMR 590.013(E)(1).
- (e) **Time frame for correction** – Food establishments should be given 10 days or less as per FC 8-405.11 (Critical Violation).
- (4) **Inspection Procedures after 2/1/11** – Sections 105 CMR 590.009(H)(3) “Food Allergen Awareness Training” takes effect on February 1, 2011, and should not be enforced during routine inspections before that date. For more details about this requirement, please refer to the enclosed regulation and Q&As sheet.

You may make copies of this letter and share it with food establishments in your jurisdiction. If you have any questions, please contact Mike Moore, MDPH/BEH Food Protection Program at michael.moore@state.ma.us or 617-983-6754.

Attachments: (1) Amendments to 105 CMR 590.000 adopted by Public Health Council
(2) Q&A for MDPH Allergen Awareness Regulation (version 8/19/10)
(3) Inspection report approved by MDPH as per 105 CMR 590.013(E)(1)
(4) Poster approved by MDPH as per 105 CMR 590.009(H)(1)